

REMARKS

Claims 1-25 are pending in this application. By this Amendment, claims 1 and 16 are amended. No new matter is added. Reconsideration of the application is respectfully requested.

Applicant gratefully acknowledges the indication that claims 6 and 7 include allowable subject matter. Withdrawal of the objection thereto is respectfully requested in view of the patentability of claim 1, as discussed below.

I. Information Disclosure Statement

An Information Disclosure Statement with Form PTO-1449 was filed in the above-captioned patent application on November 29, 2004. Applicant has not yet received from the Examiner a copy of the Form PTO-1449 initialed to acknowledge the fact that the Examiner has considered the disclosed information. The Examiner is requested to initial and return to the undersigned a copy of the Form PTO-1449 with the next Office Action. For the convenience of the Examiner, a copy of that form is attached.

II. Claim for Priority

A Claim for Priority was filed in International Application No. PCT/AU03/0077 with a certified copy of the priority document Australian Patent Application No. PS 0173, filed January 25, 2005. Therefore, it is respectfully requested that the Examiner acknowledge Applicant's claim for priority under 35 U.S.C. §119(a)-(d) or (f) and that a certified copy of the priority document was received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

III. Rejections Under 35 U.S.C. §103(a)

The Office Action rejects claims 1-5, 8-11, 14 and 15 under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. 2002/0116156 to Remboski et al. ("Remboski") in view of U.S. Patent No. 6,873,918 to Curless et al. ("Curless"); rejects claim 12 under 35

U.S.C. §103(a) over Remboski and Cureless in view of U.S. Patent 6,134,541 to Castelli et al. ("Castelli"); rejects claim 13 under 35 U.S.C. §103(a) over Remboski and Cureless in view of U.S. Patent No. 6,137,909 to Greineder et al. ("Greineder"); and rejects claims 16-25 under 35 U.S.C. §103(a) over Remboski in view of U.S. Patent No. 6,795,799 to Deb et al. ("Deb"). Applicant respectfully traverses the rejections.

Remboski does not teach or suggest a system and method for monitoring performance of at least one machine operator including "measuring at least one machine parameter during operation of the machine by the operator, said at least one machine parameter related to the operation of the machine by the at least one machine operator; generating at least one performance indicator distribution from measurements of the at least one machine parameter, said at least one performance indicator distribution comprising a range of values for a performance indicator derived from said at least one machine parameter; and calculating at least one performance indicator for the at least one machine operator from the at least one performance indicator distribution," as recited in independent claim 1, and similarly set forth in independent claim 16.

Remboski teaches, in Fig. 4, a series of steps 402-410, for assessing vehicle operator performance, where step 410 infers driver performance by using an inference engine, a rules-based decision engine, fuzzy logic, or adaptive, goal seeking. See Remboski, paragraphs [0062] – [0066]. Although Remboski is directed to systems and methods for assessing and improving vehicle operator performance, Remboski does not teach or suggest, generating at least one performance indicator distribution from the measurements of the at least one machine parameter, the at least one machine parameter related to the operation of the machine by the at least one machine operator, and calculating at least one performance indicator from the at least one performance indicator distribution for the at least one machine operator, as recited in independent claims 1 and 16.

The Office Action acknowledges that Remboski does not teach or suggest a method for monitoring operator performance including calculating at least one performance indicator from the at least one performance indicator distribution, as recited in independent claims 1 and 16. However, the Office Action asserts that Curless, Castelli, Greineder and Deb remedy the deficiencies of Remboski. Notwithstanding these assertions, Curless, Castelli, Greineder and Deb do not teach or suggest generating at least one performance indicator distribution from the measurements of the at least one machine parameter, the at least one machine parameter related to the operation of the machine by the at least one machine operator, and calculating at least one performance indicator from the at least one performance indicator distribution for the at least one machine operator.

Curless teaches, in Figs. 3 and 4, a method of monitoring a machine that uses a performance indicator distribution to calculate overall performance of a machine by diagnosing mechanical conditions of the machine. See col. 1, lines 8-13. As shown in Figs. 3 and 4, Curless teaches distributions of a measured physical property of a machine's tool spindle vibration acceleration, which relates to performance of the machine. Therefore, Curless is directed to systems and methods for monitoring operation and use of a machine, not a machine operator.

Curless does not mention monitoring a performance of a machine operator. Therefore, a person of ordinary skill in the art would not have been motivated to combine the teachings of Curless regarding monitoring a machine's performance with the teachings of Remboski regarding monitoring a machine operator's performance as asserted by the Office Action. In other words, a person of ordinary skill in the art would not have been motivated to modify the machine operator performance monitoring of Remboski based on the teachings of machine performance monitoring provided by Curless. Because no motivation exists in either

Remboski or Curless to combine or modify as alleged by the Office Action, such combination is improper and appears to be based on impermissible hindsight.

Because Castelli, Greineder and Deb also do not teach or suggest generating at least one performance indicator distribution from the measurements of the at least one machine parameter, the at least one machine parameter related to the operation of the machine by the at least one machine operator, and calculating at least one performance indicator from the at least one performance indicator distribution for the at least one machine operator, these reference do not remedy the deficiencies of Remboski and Curless.

In the system and method of claims 1 and 16, a performance indicator may indicate a performance of a machine operator, not the machine itself. For example, each KPI parameter is related to the performance of a machine operator for one or more given machine parameters such as fill time, cycle time and dig rate. See page 5, lines 1-3 of the specification. These machine parameters are directly effected by or dependent on how efficiently the machine operator operates the machine. See page 5, lines 3-8, and page 7, lines 22-32 of the specification. Therefore, the system and method may enable fair comparisons between different operators and between different performances by the same operator without skewing such performance results, which may conventionally be skewed by, for example, use of different machines, different digging conditions, etc. Remboski, Curless, Castelli, Greineder and Deb do not teach or suggest such features or provide such advantages.

For at least the reasons discussed above, claims 1 and 16 would not have been rendered obvious by Remboski, Curless, Castelli, Greineder and Deb, alone or in permissible combination. Claims 2-15 and 17-25 variously depend from independent claims 1 and 16, and thus also would not have been rendered obvious by Remboski, Curless, Castelli, Greineder and Deb, alone or in permissible combination, for at least the reasons set forth

above, as well as for the additional features they recite. Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-25 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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